



Mr. Chris Knopp, Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

November 23, 2012, via email.

Dear Chris,

As we indicated in our recent email, it was a pleasure to meet with you and to discuss our EWC involvement with the Delta Stewardship Council. We look forward to the upcoming release of the programmatic EIR for the Delta Plan and for the opportunity to comment on your findings.

As we discussed at our November 7 meeting, we believe that three critical actions have been missing from all previous versions of the Delta Plan and need to be incorporated into the final Plan. Those three actions are:

1. The need for a Water Availability Analysis related to the Delta in order to determine the extent of existing water rights compared with the actual availability of water in most years. Three of our EWC organizations provided testimony this past week at a State Water Resources Control Board workshop which showed that current water rights for the main tributaries to the Delta watershed exceed typical water supply by a factor of more than five. The data presented was the result of an extensive research by the California Water Impact Network and it provided quite a shock to the Board members to see the actual numbers (153,227 MAF of Consumptive Water Right Claims versus 27,800 MAF of Average Unimpaired Flow). An official Water Availability Analysis, although fraught with political implications, would have a significant effect of future Delta plans and needs to be highlighted and accomplished as a part of a valid Delta Plan.
2. A Cost/Benefit Analysis is a commonly accepted way of doing business for any major project. Although not required, CEQA guidelines suggest that it may be accomplished if warranted. NEPA requires such an analysis and provides guidelines for the accomplishment of this kind of economic analysis for major projects. Investment in the Delta Plan components during the foreseeable future (tunnels, mitigation, ecosystem restoration, surface storage, water bonds, and

bond interest) may easily reach \$50 billion; the state and the Delta Stewardship Council would be negligent if it did not require Cost/Benefit Analyses in order to be compliant with every major component of the Delta Plan.

3. The Public Trust Doctrine is an affirmation of the duty of the state to protect the people's common heritage in streams, lakes, marshlands, and tidelands. The application of the Public Trust Doctrine requires an economic and sociological analysis of the public trust values of competing alternatives, as was directed by the State Water Board in the Mono Lake Case. Its applicability to alternatives for the Delta, where species recovery and ecosystem restoration are being pitted against further water exports, is exactly the kind of situation suited to a Public Trust balancing, which should be required by the Delta Plan. As required by Water Code §85203: "[t]he longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." The Council, therefore, clearly has trustee responsibilities in balancing the public trust, although you have punted on that responsibility to date. Planning and allocation of limited and oversubscribed resources implies analysis and balancing of competing demands. Inexplicably, we find little effort to balance the public trust obligations and resolve competing demands in previous drafts of the Delta Plan and we look forward to seeing this accomplished as a part of the upcoming Delta Plan EIR.

In addition to these above points, and anticipating a thorough Delta Plan that is responsive to the many previous comments that you have received, we strongly suggest that you plan for a comment period that is longer than the usual 45 day period. With a release date that extends over the holiday period, we feel that this would be a judicial decision and would allow responders to accomplish a thorough analysis and contribute to a more satisfactory Delta Plan EIR.

We thank you for your consideration of these points and look forward to the forthcoming Delta Plan EIR.



Co-Facilitator  
Environmental Water Caucus



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